

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 29-2000-0063 CG**

**Charity Gaming**

**Appeal of Indiana Charity Gaming License Denial**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUES**

**Charity Gaming – Continuous Existence**

**Authority:** IC 4-32-6-20; IC 6-2.1-3-19; IC 6-2.1-3-20; 45 IAC 18-2-1; IC 23-17-23-3; 45 IAC 18-1-7(4); 45 IAC 18-2-1(b)(6)(B); Dept. of Revenue v. There To Care, Inc., 638 N.E.2d 871 at 874 (Ind. App. 5 Dist. 1994); Baseball, Inc. v. Dept. of State Revenue, 672 N.E.2d 1368 at 1377 (Ind.App. 1996); Portland Summer Festival v. Department of Revenue, 624 N.E.2d 45 (Ind.App. 5 Dist. 1993); Raintree Friends Housing, Inc. v. Indiana Dept. of State Revenue, 667 N.E.2d 810 (Ind. Tax 1996).

Evansville Athletic Club, Inc. (hereinafter referred to as Petitioner) protests the Department's determination that it was not operating as a Not-For-Profit entity, as described in IC 4-32-6-20, for the past five years.

**STATEMENT OF FACTS**

The Petitioner completed Form CG-2 (Indiana Department of Revenue Annual Bingo License Application for First Time Applicants) on December 3, 1999. Petitioner's application was received by the Department on December 13, 1999. The Petitioner completed form IT-35A (Application to file as a Not-for Profit Corporation) on November 19, 1999, and was received by the Department on December 15, 1999. The Petitioner's CG-2 was denied by the Department January 21, 2000. The Petitioner protested the Department's denial in a letter postmarked January 29, 2000. The Petitioner's protest was filed in a timely manner. A hearing on Applicant's protest was held on Wednesday, March 1, 2000. On March 10, 2000, a transcript of the hearing was received by the Department.

**Charity Gaming – Continuous Existence**

**DISCUSSION**

The Petitioner protests the Department's determination that it was not operating as a Not-For-Profit entity, as described in IC 4-32-6-20, for the past five years. Indiana Code section 4-32-6-20 states:

(a) "Qualified organization" means:

(1) a bona fide religious, educational, senior citizen, veterans, or civic organization operating in Indiana that:

(A) operates without profit to the organization's members;

(B) is exempt from taxation under Section 501 of the Internal Revenue Code; and

(C) has been continuously in existence in Indiana for at least five (5) years or is affiliated with a parent organization that has been in existence in Indiana for at least five (5) years ... (emphasis added.)

The Department's witness stated under oath, that according to the Department's investigation, the taxpayer was not a qualified organization pursuant to IC 4-32-6-20. (Record at 28). The Department's witness also testified that the Petitioner was in the process of conducting charity gaming back in November of 1998. (Record at 10 and 11). The Department also produced the Petitioner's 1997 Special Corporation Income Tax Return (IT-20SC), and U.S. Corporation Income Tax Returns (Form 1120) for the years ending 1996 and 1998. (Department's Exhibits 1, 2, and 3).

Pursuant to IC 6-8.1-5-1, the Department's findings are prima facie evidence that the Department's claim that the entity does not qualify for a license is valid. The burden of proving that the findings are wrong rests with the person against whom the findings are made. See Portland Summer Festival v. Department of Revenue, 624 N.E.2d 45 (Ind.App. 5 Dist. 1993).

In support of its protest, the Petitioner states that IC 4-32-6-20 only requires that an organization operate without profit to the organization's members. Second, the organization is exempt from taxation under Section 501 of the Internal Revenue Code. Finally, the organization has to have been in continuous existence for at least five (5) years. The Petitioner states that they meet all three requirements. The Petitioner argues that they have always been a not-for-profit organization, and that it has always operated without profit to the organization's members. The Petitioner states that they have received their federal exempt status letter from the IRS (dated Aug. 30, 1999), and that the organization has definitely been in existence for more than five (5) years.

To be a qualified organization and conduct charity gaming in the State of Indiana an organization must be, (1) a bona fide organization, (2) that operates without profits to its members, (3) is tax exempt, and (4) has been in continuous existence for at least five (5) years. See, Dept. of Revenue v. There To Care, Inc., 638 N.E.2d 871 at 874 (Ind. App. 5 Dist. 1994). In that case the court stated, ... IC 4-32-6-20 (“qualified organization” must be nonprofit, tax exempt, and continuously in existence for at least five years or affiliated with an Indiana parent organization that has been in existence for at least five years).... Likewise, the Court of Appeals in Baseball, Inc. v. Dept. of State Revenue, 672 N.E.2d 1368 at 1377 (Ind.App. 1996) stated, “... A careful reading of the statute indicates that to be qualified an organization must be a bona fide organization: (1) that operates without profit to its members; and (2) is exempt from various taxes, and (3) has been in continuous existence for five years. The lack of any of the three requirements, then, renders the organization unqualified....

The Petitioner was administratively dissolved by the Indiana Secretary of State for failure to file annual reports on July 11, 1988. The Petitioner filed an application and was reinstated on February 16, 1999. Under IC 23-17-23-3 a corporation administratively dissolved under section 2 may apply for reinstatement. Pursuant to subsection c, when the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation resumes carrying on its business as if the administrative dissolution had never occurred. The Petitioner also argues that they filed with the Secretary of States Office annual reports to bring them into compliance. The Petitioner dismisses the fact that they were indeed incorporated as a not-for-profit corporation while having filed corporate for-profit returns (Department’s Exhibits 1, 2, and 3). The Petitioner argues that there is no prohibition against a not-for-profit organization filing and paying taxes.

In order for an organization to conduct charity gaming in Indiana, it must first be a qualified organization. That means that it must be not-for-profit entity and tax exempt at both the federal and state level. At hearing the Department produced the Petitioner’s 1997 IT-20SC, and Federal 1120s for the years ending 1996 and 1998. A further review of the Department’s records indicate that the Petitioner filed IT-20SC returns for at least the last seven (7) years. A not-for-profit entity is required by Indiana law to file an IT-20NP (Not-For-Profit) return. IC 6-2.1-3-19(b).

The Petitioner’s counsel embarked on a line of questioning during the hearing attempting to show that the organization met the definition of a qualified organization under IC 432-6-20. The first requirement is that the organization must be a qualified organization. The organization in order to meet this qualification must be a not-for-profit organization. Petitioner’s counsel asked, “Is it your understanding that the Evansville Athletic Club is Not-For-Profit?”(Record at 39). The President Responded, “That is correct”(Record at 39). Counsel then stated, “And why do you think that?” (Record at 39) President responded, “An organization that is organized for profit...means you are making a profit for the shareholders or investors of the corporation...” (Record at 39). The Petitioner’s President was asked by their counsel, “Does the corporation have any stock? (Record at 39). The President responded, “No, it does not.” (Record at 39). Petitioner’s counsel

then stated, "I would like to draw your attention to Article 8(a) of the current Articles of Incorporation. The current articles of Incorporation, and that's a paragraph regarding the Not-For-Profit status of the organization. Could you read that for us? (Record at 40). The President responded, "This Corporation is a public benefit corporation. This Corporation is not-for-profit and shall have no capital stock..." (Record at 40).

A review of the Petitioner's Federal Form 1120 corporate income tax returns for 1996 and 1998 show that the Petitioner did issue \$40,000 worth of capital stock. (Department's Exhibit 2 and 3 Schedule L line 22). A closer review of the Petitioner's federal tax returns reveal that they also had retained earnings which is atypical of a not-for-profit corporation. (Department's Exhibit 2 and 3 line 25).

Pursuant to IC 6-2.1-3-20, a not-for-profit corporation, "that is organized and operated exclusively for... civic... purposes is exempt from gross income tax if no part of the gross income is used for the private benefit or gain of any member..." See, Raintree Friends Housing, Inc. v. Indiana Dept. of State Revenue, 667 N.E.2d 810 (Ind. Tax 1996). In this case, the Petitioner issued forty thousand dollars (\$40,000) worth of common stock (a benefit to the shareholders) thereby negating the Petitioner's argument that they are a not-for-profit entity.

Therefore, not only did the Petitioner give false testimony concerning its issuance of stock, but also contradicted their own definition of a not-for-profit organization. The Petitioner also admitted in sworn testimony that they violated their own articles of incorporation.

### **FINDING**

The Petitioner's protest is denied.

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